

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

U.S. Department of Energy
Brookhaven Area Office
Upton, NY 11973

EPA ID Number NY7890008975

Proceeding under Section 3008
of the Resource Conservation
and Recovery Act, 42 U.S.C.
§ 6928

NOTICE OF VIOLATION
AND COMPLIANCE DEMAND

Docket No. II RCRA-91-0205

NOTICE OF VIOLATION

This NOTICE OF VIOLATION AND COMPLIANCE DEMAND ("NOV/CD"), is issued under the Solid Waste Disposal Act ("the Act"), as amended by the Resource Conservation and Recovery Act ("RCRA"), and further amended by the Hazardous and Solid Waste Amendments, ("HSWA"). Issuance of this Notice is consistent with Executive Order 12088, Federal Compliance With Pollution Control Standards. The authority to issue this Notice has been delegated by the Administrator of the U.S. Environmental Protection Agency ("EPA") to the Regional Administrator of EPA Region II and further delegated to the Director, Air and Waste Management Division, EPA Region II ("Complainant").

Complainant is issuing this Notice to Respondent, the U.S. Department of Energy, Brookhaven Area Office, as a result of an inspection conducted on or about March 4, 1991 through March 8, 1991, which revealed that Respondent has violated or is in violation of one or more requirements of Subtitle C of RCRA and the regulations promulgated thereunder concerning the management of hazardous waste.

Pursuant to Section 6001 of the Act, 42 U.S.C. § 6961, the Respondent, as a department of the executive branch of the Federal government and an owner or operator of a hazardous waste management facility, is subject to and must comply with both the Federal and the State of New York's requirements, including regulations and permit conditions, pertaining to the management of hazardous waste, in the same manner and to the same extent as any "person" [as that term is defined in Section 1004(15) of the Act 42 U.S.C. § 6903(15), 40 Code of Federal Regulations ("C.F.R.") § 260.10, and 6 New York Code of Rules and Regulations ("NYCRR") § 370.2(b)(109)].

Section 3006(b) of the Act, 42 United States Code ("U.S.C.") § 6926(b), provides that the Administrator of the EPA may, if certain criteria are met, authorize a state to operate a hazardous waste program in lieu of the federal program. The State of New York received final authorization to administer its hazardous waste program on May 29, 1986. Section 3008 of the Act, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program. Executive Order 12088, Section 1-3, authorizes EPA to oversee federal compliance with the Act - in particular, to monitor federal facility compliance with applicable pollution control standards.

This is to notify Respondent that the Complainant has determined that the Respondent has violated the Act, the New York State Environmental Conservation Law, Article 27, Titles 7 and 9, and the regulations promulgated thereunder, as hereinafter specified.

In order to return to compliance, Respondent must implement the actions proscribed in the section entitled "Compliance Schedule" of this document within the time frames stipulated or immediately cease the management of hazardous waste at the affected units or at the facility until the violations are remedied. Two possible alternatives to this action by the Respondent are: (1) the seeking of a Presidential exemption pursuant to Section 6001 of the Act, or (2) the petitioning of Congress for specific legislative relief.

1. Respondent is the U.S. Department of Energy, Brookhaven Area Office. Respondent owns a facility known as the Brookhaven National Laboratory ("the facility"), located in Upton, NY 11973.

2. Pursuant to Section 6001 of the Act, 42 U.S.C. § 6961, Respondent is subject to all Federal, State, interstate and local requirements, both substantive and procedural, respecting control and abatement of solid waste or hazardous waste disposal pursuant to the Act in the same manner, and to the same extent, as any "person".

3. Respondent is a "generator" of hazardous waste [as that term is used in 40 C.F.R. Part 262].

4. Title 40 C.F.R. Parts 262, 265, 268, and 270 set forth federal standards for hazardous waste generators and interim status treatment, storage or disposal facilities. Title 6 NYCRR Parts 370, 372, and 373 establish New York State requirements for hazardous waste generators and interim status treatment, storage or disposal facilities.

5. The Department of Energy, Brookhaven Area Office ("DOE") submitted a Part A permit application to EPA on November 21, 1980. DOE submitted a Part B permit application to EPA on April 4, 1985.

6. On or about March 4, 1991 through March 8, 1991, an inspection ("the inspection") of the facility was conducted pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, by duly-designated representatives of EPA to determine compliance with specific state and federal regulations for the generation and management of hazardous waste.

COUNT 1

7. Complainant realleges each allegation contained in paragraphs "1" through "6", inclusive, as if fully set forth herein.

8. Pursuant to 40 C.F.R. § 265.174 and 6 NYCRR 373-2.9(e), the owner or operator of a treatment, storage or disposal facility must conduct weekly inspections of hazardous waste container storage areas, looking for leaks and for deterioration of containers caused by corrosion or other factors.

9. Complainant's inspection of the facility revealed that Respondent stored approximately 24 (55 gallon) drums of scintillation vials (D001 - storage date 12/31/89) in Building 448. No aisle space was provided between drums, which were stored 4 drums deep by 4 drums wide by 2 drums high, abutted. Hence, access to, and inspection of, inner drums was not possible.

10. Respondent's failure to conduct weekly inspections of hazardous waste containers storage areas is a violation of 40 C.F.R. § 265.174 and 6 NYCRR 373-2.9(e).

COUNT 2

11. Complainant realleges each allegation contained in paragraphs "1" through "6", inclusive, as if fully set forth herein.

12. Pursuant to 40 C.F.R. § 265.32(d) and 6 NYCRR 373-3.3(c)(4), the owner or operator of a treatment, storage or disposal facility must equip his facility with water at adequate pressure and volume to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems, unless none of the hazards posed by waste handled at the facility could require that particular type of equipment.

13. Complainant's inspection of the facility revealed that Respondent maintained no fire abatement equipment other than portable fire extinguishers in Buildings 444, 448 and 483. As drums of ignitable hazardous waste are routinely stored in these buildings, an adequate water supply or foam producing equipment is required in the event of a fire.

14. Respondent's failure to equip Buildings 444, 448 and 483 of its facility with water at adequate pressure and volume to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems, is a violation of 40 C.F.R. § 265.32(d) and 6 NYCRR 373-3.3(c)(4).

COUNT 3

15. Complainant realleges each allegation contained in paragraphs "1" through "6", inclusive, as if fully set forth herein.

16. Pursuant to 40 C.F.R. § 262.34(a)(2) and 6 NYCRR 373-1.1(d)(1)(iii)(c)(2), a generator who treats, stores, or disposes of hazardous waste on-site must mark containers of hazardous waste with the date upon which each period of accumulation begins.

17. Complainant's inspection of Respondent's facility revealed that containers of hazardous waste stored in several areas of the facility were not marked to indicate the accumulation start dates. Specifically, one (55 Gallon) drum of slimicide (D001) stored in Building 444, four (55 Gallon) drums of scintillation vials (D001) stored in Building 448, one (55 Gallon) drum of carbon tetrachloride (U211) stored in Building 483, one (100 gram) bottle of fluorobenzene (D001) stored in Building 725, and one (1 Gallon) bottle of hydrochloric acid (D002) and three (0.25 pint) bottles of formic acid (U123) stored in Building 801 were not marked to indicate the accumulation start dates.

18. Respondent's failure to mark containers of hazardous waste with accumulation start dates is a violation of 40 C.F.R. § 262.34(a)(2) and 6 NYCRR 373-1.1(d)(1)(iii)(c)(2).

COUNT 4

19. Complainant realleges each allegation contained in paragraphs "1" through "6", inclusive, as if fully set forth herein.

20. Pursuant to 40 C.F.R. § 262.34(a)(3) and 6 NYCRR 373-1.1(d)(1)(iii)(c)(3), the owner or operator of a treatment, storage or disposal facility, while accumulating containers of hazardous waste on-site, must label each such container with the words "Hazardous Waste".

21. Complainant's inspection of the facility revealed that Respondent had failed to label with the words "Hazardous Waste" several containers of hazardous waste that were being accumulated on-site. Specifically, one (55 Gallon) drum of freon (F001 - accumulation start date 2/13/90) stored in Building 928, one (100 gram) bottle of fluorobenzene (D001) stored in Building 725, one (3 Kilogram) bottle of 1,4-Dioxane (U108) stored in Building 815, and one (1 Gallon) bottle of hydrochloric acid (D002) and three (0.25 pint) bottles of formic acid (U123) stored in Building 801 were not labeled with the words "Hazardous Waste".

22. Respondent's failure to mark containers of hazardous waste with the words "Hazardous Waste" while being accumulated at the facility constitutes a violation of 40 C.F.R. § 262.34(a)(3) and 6 NYCRR 373-1.1(d)(1)(iii)(c)(3).

COUNT 5

23. Complainant realleges each allegation contained in paragraphs "1" through "6", inclusive, as if fully set forth herein.

24. Pursuant to 40 C.F.R. § 270.71(a)(2) and 6 NYCRR 373-1(f)(1)(ii), an interim status treatment, storage, or disposal facility shall not employ processes not specified in Part A of its permit application.

25. Complainant's inspection of the facility revealed that Respondent had stored hazardous waste for periods greater than 90 days in an area of the facility that was not included in Respondent's Part A application. Specifically, one (8 ounce) bottle of hydrochloric acid/nitric acid (D002 - accumulation start date 11/3/90) and one (1 pint) bottle of carbon tetrachloride (U211 - accumulation start date 7/1/90) had been

stored in Building 725, which was not designated as a storage area in Respondent's Part A permit application, for 121 days and 246 days, respectively, at the time of the inspection.

26. Respondent's storage of hazardous waste for periods greater than 90 days in an area not designated in its Part A permit application is a violation of 40 C.F.R. § 270.71(a)(2) and 6 NYCRR 373-1(f)(1)(ii).

COUNT 6

27. Complainant realleges each allegation contained in paragraphs "1" through "6", inclusive, as if fully set forth herein.

28. Pursuant to 40 C.F.R. § 265.173 and 6 NYCRR 373-3.9(d)(1), the owner or operator of a treatment, storage or disposal facility must keep containers of hazardous waste closed during storage, except when it is necessary to add or remove waste.

29. Complainant's inspection of Respondent's facility revealed that Respondent had failed to keep a container of hazardous waste closed during storage. Specifically, one (55 Gallon) drum of paint thinner/lacquer (D001) in the Paint Shop storage trailer was left open, fitted with a funnel.

30. Respondent's failure to keep a container of hazardous waste closed during storage is a violation of 40 C.F.R. § 265.173 and 6 NYCRR 373-3.9(d)(1).

COUNT 7

31. Complainant realleges each allegation contained in paragraphs "1" through "6", inclusive, as if fully set forth herein.

32. Pursuant to RCRA Section 3005(b)(2), the owner or operator of a treatment, storage or disposal facility must identify in its permit application each site at which hazardous waste or the products of treatment of hazardous waste will be disposed, treated, transported to, or stored.

33. Pursuant to 40 C.F.R. § 270.71(a)(2), an interim status facility shall not employ processes not specified in its Part A permit application. 40 C.F.R. § 270.71(b) further states that during interim status, owners or operators shall comply with the interim status standards of 40 C.F.R. Part 265.

34. Complainant's inspection of the facility, which included a file review, revealed that Respondent had released untreated groundwater through the operation of an Aquifer Remediation Project, in which recovery wells discharged directly to an unlined recharge basin situated in the facility. The discharged groundwater had been contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes stored at the facility. The release of untreated groundwater occurred during the winter mode of operation of the Aquifer Remediation Project, which was conducted 122 days per year during 1987 through 1990.

35. Complainant's inspection of the facility, which included a file review, revealed that Respondent had released aerated groundwater through the operation of an Aquifer Remediation Project, in which recovery wells fitted with spray aeration nozzles discharged directly to an unlined recharge basin situated in the facility. The discharged groundwater had been contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes stored at the facility. The release of aerated groundwater occurred during the summer mode of operation of the Aquifer Remediation Project, which was conducted 243 days per year during 1987 through 1989.

36. Respondent's discharge of groundwater containing hazardous waste to an unlined recharge basin not specified in its Part A permit application is a violation of RCRA Section 3005(b)(2) and 40 C.F.R. § 270.71.

COUNT 8

37. Complainant realleges each allegation contained in paragraphs "1" through "6", inclusive, as if fully set forth herein.

38. 40 C.F.R. § 268.30 sets forth waste specific land disposal prohibitions for solvent wastes F001 through F005 identified in 40 C.F.R. § 261.31.

39. Complainant's inspection of the facility revealed that Respondent had discharged, through operation of an Aquifer Remediation Project, restricted hazardous waste (untreated groundwater contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes (F001/F002) stored at the facility) to an unlined recharge basin.

40. Complainant's inspection of the facility revealed that Respondent had discharged, through operation of an Aquifer Remediation Project, restricted hazardous waste (aerated

groundwater contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes (F001/F002) stored at the facility) to an unlined recharge basin.

41. Respondent's land disposal of groundwater containing F001/F002 restricted hazardous wastes in an unlined recharge basin is a violation of 40 C.F.R. § 268.30.

COMPLIANCE DEMAND

The foregoing allegations of this NOV/CD are based on the authority established by Section 3008 of RCRA, 42 U.S.C. § 6928, and Section 6001 of RCRA, 42 U.S.C. § 6961. As directed by Executive Order No. 12088, Section 1-101, the head of each executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control and abatement of environmental pollution with respect to federal facilities and activities under the control of the agency. The following compliance requirements are based upon the responsibility of the U.S. Department of Energy to implement and assure compliance with applicable pollution control standards at the Brookhaven National Laboratory.

1. Respondent shall within two days of receipt of this Order maintain sufficient aisle space in all hazardous waste container storage areas to allow the conduct of inspections of those areas. Respondent shall conduct weekly inspections in all hazardous waste container storage areas, so as to comply with Federal and State Regulations.
2. Respondent shall within 45 days of receipt of this Order submit plans to EPA which detail the construction or implementation of a water supply or other device to provide fire control, in accordance with Federal and State regulations, for all buildings or structures in the facility in which ignitable wastes are stored. Said plans shall include certifications of compliance with all applicable insurance and fire codes. Construction or implementation of the water supply or fire control device described in said plans must be completed within six months of this Order.
3. Respondent shall within two days of receipt of this Order mark all containers of hazardous waste in storage at the facility (with the exception of those containers in satellite accumulation areas) with the date upon which each period of accumulation begins.

4. Respondent shall within two days of receipt of this Order mark all containers of hazardous waste in storage at the facility with the words "Hazardous Waste".
5. Respondent shall within 10 days of receipt of this Order cease to store hazardous wastes on site for more than the permitted time period, so as to comply with Federal and State regulations.
6. Respondent shall immediately upon receipt of this Order maintain all containers of hazardous waste at the facility in a closed condition, except when it is necessary to add or remove waste.
7. Respondent shall not operate a surface impoundment or spray aeration device for the treatment, storage, or disposal of hazardous waste without either first obtaining a RCRA permit for such operation or establishing substantive compliance with all applicable RCRA requirements for such operation under the terms of a final (effective) Interagency Agreement with EPA.
8. Respondent shall, within 90 days of receipt of this Order, either submit to EPA closure plans under RCRA for all hazardous waste land disposal units at the facility or present documentation that substantive RCRA closure requirements for such units are included under the terms of a final (effective) Interagency Agreement with EPA.
9. Within 20 days of receipt of this Complaint, Respondent shall submit to EPA written notice of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance for each of the requirements set forth in paragraphs "1", and "3" through "7", above. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement.
10. Within 45 days of receipt of this Complaint, Respondent shall submit to EPA written notice of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance for each of the requirements set forth in paragraph "2", above. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement.

11. Within 90 days of receipt of this Complaint, Respondent shall submit to EPA written notice of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance for the requirements set forth in paragraph "8", above. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement.
12. Respondent shall submit the above required information and notices to the following addressees:

Mr. George C. Meyer, P.E., Chief
Hazardous Waste Compliance Branch
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 1000F
New York, New York 10278

Mr. Leonard Grossman
Hazardous Waste Compliance Branch
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 1000G
New York, New York 10278

RESERVATION OF RIGHTS

Nothing in this Notice shall prohibit, prevent or otherwise preclude the New York State Department of Environmental Conservation from taking whatever legal action it deems appropriate to enforce the New York hazardous waste regulations or any other environmental protection law of the State.

SETTLEMENT PROCESS

The Agency encourages Respondent to confer with EPA concerning the alleged violations described in this NOV/CD. Such a conference provides Respondent with an opportunity to respond to the charges informally and to provide whatever additional information Respondent feels is relevant to the disposition of this matter, including: (1) actions taken to correct any violations; and (2) other special circumstances Respondent wishes to raise. Any settlement of this matter shall be made final by issuance of a Federal Facilities Compliance Agreement (FFCA), which must be approved by the Regional Administrator of EPA.

If you have neither effected a settlement by informal conference, nor agreed with the terms of the compliance requirements within 35 days of receipt of this NOV/CD, EPA, Region II, may issue a joint administrative order with the New

Administrator of EPA will request the Director of the Office of Management and Budget to resolve the conflict pursuant to Section 1-602 of Executive Order No. 12088. As provided in Section 1-604 of that Order, such conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

Any questions that you may have regarding this NOV/CD should be directed to our Office of Regional Counsel, EPA Region II. If you desire an informal conference, please contact Ms. Amy Chester, Esquire, at (212) 264-4670.

COMPLAINANT:

June 28, 1991


CONRAD SIMON

Director

Air & Waste Management Division
Environmental Protection Agency
Region II

TO: Jane Monhart, Acting Manager
Brookhaven Area Office
U.S. Department of Energy
53 Bell Avenue
Upton, NY 11973

cc: Mr. John Middlekoop
N.Y. State Department of Environmental Conservation

bcc: Bob Small, WH-527
John Gorman, 2AWM-HWC
Leonard Grossman, 2AWM-HWC
Laura Livingston, 2OPM-HWC
Amy Chester, 2ORC-AWTS

CERTIFICATE OF SERVICE

This is to certify that on the day of 12th July, 1991, I served a true and correct copy of the foregoing Notice of Violation and Compliance Demand to the U.S. Department of Energy, Brookhaven Area Office, 53 Bell Avenue, Upton, NY 11973. I carried the original foregoing Notice of Violation, Compliance Demand to the Regional Hearing Clerk.

Jessie Freeman